

RHS, RBS, RUS, FSA, USDA

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(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a non-program loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(f) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members of the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by FmHA or its successor agency under Public Law 103-354 as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect FmHA or its successor agency under Public Law 103-354's interest. Servicing actions necessary due to such provisions will be tracked in the Multi-Family Housing Information System (MFIS).

(g) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA or its successor agency under Public Law 103-354, and in compliance with any special servicing ac-

tions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted in MFIS.

(h) *Correcting errors in security instruments.* Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice, that the property was included due to mutual error.

(i) *Present market value determination.* For purposes of this subpart, the value of security is determined by the approval official as follows:

(1) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(2) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(3) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of subpart A of part 1942 of this chapter. The appraisal will be completed by a qualified FmHA or its successor agency under Public Law 103-354 employee or an independent appraiser as determined appropriate by the approval official.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 775, Jan. 9, 1992; 57 FR 21199, May 19, 1992; 57 FR 36591, Aug. 14, 1992; 69 FR 69105, Nov. 26, 2004]

§ 1951.221 Collections, payments and refunds.

Payments and refunds are handled in accordance with the following:

(a) *Community and Insured Business Programs.* (1) Field offices can obtain data on principal installments due for Community and Insured Business Programs loans with unamortized installments using the borrower status screen option in the ADPS.

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(2) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA or its successor agency under Public Law 103–354’s security.

(i) Distribution of such payments is made as follows:

(A) First, to the FmHA or its successor agency under Public Law 103–354 loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(2)(i) (B) and (C) of this section.

(B) Second, to the FmHA or its successor agency under Public Law 103–354 loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(2)(i)(C) of this section.

(C) Third, as advance payments on FmHA or its successor agency under Public Law 103–354 loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower’s request, and related circumstances.

(ii) Unless otherwise established by the debt instrument, regular payments will be applied as follows:

(A) For amortized loans, first to interest accrued (as of the date of receipt of the payment), and then to principal.

(B) For principal-plus-interest loans, first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(3) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in §1806.5(b) of subpart A of part 1806 (paragraph V B of FmHA or its successor agency under Public Law 103–354 Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular

payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA or its successor agency under Public Law 103–354 loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) *Soil and Water Conservation Loans.* (1) Regular payments for such loans are defined in §1951.8(a) of subpart A of part 1951 of this chapter, and are distributed according to §1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in §1951.8(b) of subpart A of part 1951 of this chapter, and are distributed according to §1951.9(b) of that subpart.

[55 FR 4399, Feb. 8, 1990, as amended at 66 FR 1569, Jan. 9, 2001; 68 FR 61331, Oct. 28, 2003; 68 FR 69952, Dec. 16, 2003]

§ 1951.222 Subordination of security.

When a borrower requests FmHA or its successor agency under Public Law 103–354 to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA or its successor agency under Public Law 103–354 lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) *General.* The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the Rural Development indebtedness.

(2) It must be determined that the borrower cannot refinance its FmHA or its successor agency under Public Law 103–354 debt in accordance with subpart F of part 1951 of this chapter.